

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL AND PLANT HEALTH INSPECTION SERVICE

APHIS DIRECTIVE 402.5

9/25 /81

TRAINING AS "HOURS OF WORK" UNDER FAIR LABOR STANDARDS ACT
(FLSA)

I. PURPOSE

This Directive states the circumstances when an employee may consider time spent in training or in preparation for training as "hours of work" under the Fair Labor Standards Act (FLSA).

II. CANCELLATION

Cancel APHIS Bulletin 81-12 (3/16/81).

III. COVERAGE

- A. Employee Coverage. This Directive applies to employees nonexempt (covered) under FLSA when time in training and in preparation for training meets the definition of "hours of work" under FLSA- See Attachment 1 for a listing of employees who are nonexempt (covered) under FLSA.
- B. Geographic Coverage. The provisions of FLSA apply in the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the Canal Zone, and other U.S. territories. FLSA provisions do not apply in foreign areas, except where specifically stated under other laws, regulations, and policies.

IV. GENERAL

The Office of Personnel Management previously prohibited payment of overtime compensation under FLSA for time spent in training. That determination was reexamined in light of the differences between Title 5 of the United States Code and FLSA. Time spent in training, or in preparation for training, outside regular working hours will now be compensable as "hours of work" under FLSA if certain criteria are met. (See Attachment 2.)

V. POLICY

In general a Federal employee is paid for all time spent learning the duties and responsibilities of his/her current position. If training is primarily for the benefit of APHIS, then the time spent in training is "hours of work" under FLSA. If training is primarily for the benefit of the employee, (that is, to provide the employee with additional skills required for promotion), then the time spent in this type of training is not "hours of work" under FLSA. The fact that APHIS authorizes funds for an employee's attendance at such training under the Government Employee's Training Act has no bearing on this determination. Whether time spent in training will be considered "hours of work" is a separate and independent determination under FLSA.

VI. TIME SPENT IN TRAINING

- A. Time Spent In Training Outside Regular Working Hours will be considered "hours of work" if:
 - 1. The employee is "directed" to participate in the training by APHIS. ("Directed" means that the training is required by APHIS, and the employee's performance in his or her current position will be adversely affected by non-enrollment.)
 - 2. The purpose of the training is to bring an employee's performance up to an acceptable level in his or her current position.

NOTE: Training to improve the employee's performance in his or her current position is distinguished from upward mobility training or developmental training, to provide an employee the knowledge or skills needed for a subsequent position in the same career field.

- B. Time spent by an employee performing work for APHIS during a period of training will be considered "hours of work."
- C. Time spent by an employee within APHIS' allowance of preparatory time for attendance at training will be considered "hours of work" if such preparatory time is:
 - 1. During the employee's regular working hours, or
 - 2. Outside the regular working hours, and the purpose of the training meets the requirements specified in A. 1. and 2. above.

The supervisor must determine allowances for time needed to prepare for training (prework), if any, on an individual course requirement basis at the time an employee is authorized to participate in a particular training course. Base such determinations on the course sponsor's recommended estimate of the prework time required for the offered training. Refer questions concerning prework allowances to the appropriate training entity, i.e., Human Resources Development Programs, HRD; or the Professional Development Staff of Veterinary Services or of Plant Protection and Quarantine.

- D. Time spent attending a lecture, meeting, or conference will be considered "hours of work" if attendance is:
1. During the employee's regular working hours, or regular working hours if the employee is;
 2. Outside the employee's regular working hours if the employee is;
 - a. Directed to attend such an event, or
 - b. Performs work for the benefit of APHIS during such attendance.

/s/ James O. Lee, Jr.
Acting Administrator

Attachments

- (1) Employees Nonexempt (Covered) Under FLSA
- (2) Circumstances When Time Spent Outside Regular Working Hours Is Considered "Hours of work" Under FLSA

Attachment I

FAIR LABOR STANDARDS ACT (FLSA) NONEXEMPT POSITIONS

FLSA specifies that employees in the following positions are nonexempt (covered) by the FLSA and must be paid under FLSA if their entitlement is greater under FLSA than it is under the statutory and regulatory pay provisions otherwise applicable:

- A. All positions at GS-4 and below.
- B. All positions at GS-5 through GS-10 are nonexempt except that such positions may be exempt (not covered) if the position is that of an administrative, executive, or professional employee.
- C. All positions GS-11 and above shall be deemed to be exempt.
- D. All WG and WL positions.
- E. Determination as to the exempt/nonexempt status of positions shall be the responsibility of the servicing classification specialist.
- F. As a guide, the following positions, up to and including the grade level indicated, are nonexempt from the provisions of FLSA:

GS-018	Safety and Health Specialist	GS-7
GS-019	Safety Technician	GS-9
GS-028	Environmental Specialist	GS-7
GS-099	Student Trainee (General)	All Grades
GS-201	Personnel Management Specialist	GS-7
GS-203	Personnel Assistant	GS-9
GS-212	Personnel Staffing Specialist	GS-7
GS-221	Position Classification	GS-7
GS-223	Salary Wage Administration	GS-7
GS-230	Employee Relations	GS-7
GS-233	Labor Relations	GS-7
GS-235	Employee Development	GS-7
GS-260	Equal Employment Specialist	GS-7
GS-301	General	GS-7
GS-303	Misc. Clerk and Assistant	All Grades
GS-305	Mail & File	All Grades
GS-309	Correspondence Clerk	All Grades
GS-312	Clerk Stenographer	All Grades
GS-318	Secretary	All Grades
GS-322	Clerk Typist	All Grades

GS-332 Computer Operator	All Grades
GS-334 Computer Specialist	GS-7
GS-335 Computer Aid and Technician	GS-9
GS-341 Administrative Officer/Assistant	GS-7
GS-342 Support Services Supervisor	GS-9
GS-343 Management Analyst	GS-7
GS-344 Management Clerical & Assistance	GS-9
GS-345 Program Analyst	GS-7
GS-356 Data Transcribing	All Grades
GS-357 Coding Clerk	All Grades
GS-382 Telephone Operating	All Grades
GS-391 Communication Management	GS-9
GS-393 Communication Specialist	GS-9
GS-401 Biological Science	GS-7
GS-403 Microbiology	GS-7
GS-404 Biological	GS-9
GS-414 Entomology	GS-7
GS-421 Plant Pest Aid/Technician	GS-9
GS-430 Botany	GS-7
GS-434 Plant Pathology	GS-7
GS-436 Plant Protection and Quarantine	GS-7
GS-462 Forestry Technician	GS-9
GS-471 Technical Info. Spec. (Agronomy)	GS-7
GS-499 Biological Science Student Trainee	All Grades
GS-501 General Accounting & Admin.	GS-7
GS-505 Financial Management	GS-9
GS-510 Accountant	GS-7
GS-525 Accounting Technician	All Grades
GS-540 Voucher Examining	All Grades
GS-560 Budget Analyst	GS-9
GS-561 Budget Assistant	GS-7
GS-701 Veterinary Medical Officer	GS-7
GS-704 Animal Health Technician	GS-9
GS-799 Veterinary Student Trainee	All Grades
GS-801 Engineering General	GS-9
GS-802 Engineering Technician	GS-9
GS-808 Architecture	GS-7
GS-810 Civil Engineer	GS-7
GS-830 Mechanical Engineer	GS-7
GS-850 Electrical Engineer	GS-7
GS-890 Agricultural Engineer	GS-7
GS-990 Claims Specialist	GS-7
GS-998 Claims Clerk	All Grades
GS-1001 General Arts & Information	GS-7
GS-1020 Illustrating	GS-7

GS-1035 Public Affairs Specialist	GS-7
GS-1046 Clerk Translator	All Grades
GS-1071 Audio/Visual Specialist	GS-7
GS-1082 Writer/Editor	GS-7
GS-1083 Technical Writing	GS-7
GS-1084 Visual Information	GS-9
GS-1087 Editorial Assistant	All Grades
GS-1101 General Business & Industry	GS-7
GS-1102 Contract & Procurement	GS-9
GS-1104 Property Utilization Spec.	GS-7
GS-1105 Purchasing Agent	GS-7
GS-1106 Procurement Clerk & Assistance	All Grades
GS-1107 Property Utilization Spec.	GS-9
GS-1160 Financial Analyst	GS-9
GS-1170 Realty Specialist	GS-7
GS-1301 General Physical Science	GS-7
GS-1311 Physical Science Aid/Technician	All Grades
GS-1320 Chemistry	GS-7
GS-1410 Librarian	GS-9
GS-1412 Technical Information	GS-9
GS-1422 Librarian Technician	GS-9
GS-1531 Statistical Assistant	All Grades
GS-1640 Facility Management	GS-9
GS-1654 Printing Management	GS-7
GS-1670 Equipment Specialist	GS-7
GS-1702 Training Technician	GS-9
GS-2005 Supply Clerk/Technician	All Grades
GS-2132 Travel Clerk	All Grades